

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)

Amendment of Section 73.202(b),)

Table of Allotments,)

FM Broadcast Stations.)

(Wilson and Knightdale, North Carolina))

MB Docket No. 05-121

RM-11197

(Columbus and Monona, Wisconsin))

MB Docket No. 05-122

RM-11198

NOTICE OF PROPOSED RULE MAKING

Adopted: March 16, 2005

Released: March 18, 2005

Comment Date: May 9, 2005

Reply Comment Date: May 24, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a multiple docket *Notice of Proposed Rule Making* setting forth two separate proposals to amend the FM Table of Allotments, Section 73.202(b) of the Rules. Each proposal involves a change of community of license. Each petitioner states that it will file an application for construction permit to effectuate the change of community if granted. We believe that each proposal warrants consideration because it complies with our technical requirements and would serve the public interest.

2. Each of the petitioners filed its proposal for reallocation in accordance with the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's license to specify a new community of license while not affording other interested parties the opportunity to file competing expressions of interest in the proposed allotment.¹ In each case, the amended allotment would be mutually exclusive with the station's present allotment. In considering a reallocation proposal, we compare the existing allotment to the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. This determination is based upon the *FM Allotment Priorities*.²

¹ See *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

² The FM Allotment priorities are: (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; (4) Other public interest matters. [Co-equal weight is given to given to priorities (2) and (3)]. See

3. This is a multiple docket *Notice of Proposed Rule Making* issued in response to a Commission *Public Notice* released October 2, 1998 (DA 98-1987). We are combining five separate FM allotment proposals into a single *Notice of Proposed Rule Making*. Each proposal has its own docket and rulemaking number and the Commission's Reference Center will maintain a separate file for each docket. As discussed in the *Public Notice*, this procedure will conserve Commission resources and expedite the processing of FM allotment petitions by avoiding duplicative actions. We seek comments on the following proposals:

A. MB Docket No. 05-121; RM-11197

Petitioner: Capstar TX Limited Partnership

c/o Mark N. Lipp, Esq.
Vinson and Elkins, L.L.P.
1455 Pennsylvania Ave., N.W, Suite 600
Washington, D.C. 20004-1008

Proposal: Capstar TX Limited Partnership proposes the reallocation of Channel 291C0 from Wilson to Knightdale, North Carolina, and the modification of Station WRDU(FM)'s license accordingly.³

<u>Community</u>	<u>Present</u>	<u>Channel No.</u>	<u>Proposed</u>
Wilson, North Carolina	291C0		--
Knightdale, North Carolina	--		291C0

Coordinates: The reference coordinates for Channel 2291C1 at Knightdale are 35-47-50 NL and 78-22-15 WL. This allotment requires a site restriction of 10 kilometers (6.2 miles) east to avoid short-spacings to the licensed site of Station WFJA(FM), Channel 288A, Sanford, North Carolina, and the licensed site of Station WMNA-FM, Channel 292A, Gretna, Virginia.

Revision of FM Assignment Policies and Procedures, 90 FCC2d 88 (1982).

³ In support of its proposal, petitioner states that Knightdale has a 2000 U.S. Census population of 6,017 persons. It has its own a mayor-counsel-manager form of government. In addition, the local government of Knightdale consists of a town attorney, town engineer, and individuals who work in the following departments: Administration, Finance, Legislative, Parks and Recreational, Planning Public Safety, and Public Works. Knightdale also has a Land Use Review Board and a Parks and Recreation Advisory Board. Knightdale has two post offices, a zip code (27545), and a phone book which contains yellow and white page directories for the community of Knightdale. Knightdale is home to the Knightdale Chamber of Commerce and a variety of business and commercial establishment, and a number of religious and community organizations, three public schools.

Additional Information: The reallocation of Channel 291C0 to Knightdale, North Carolina, will provide the community with its first local aural transmission service, without depriving Wilson (population 43,068) of its sole local service. Stations WGTM(AM), WLLY(FM), WVOT(AM) and WAJC(NCE) would remain licensed to the community. An engineering analysis has determined that at the proposed site, the 70 dBu signal will encompass 94 percent of the Rocky Mount, North and 50 percent of the Greensboro, North Carolina, 60 percent of the Durham North Carolina and 100 percent of the Raleigh North Carolina Urbanized Areas. Station KRDU(FM)'s 70 dBu signal currently encompasses more than 50 percent of the Rocky Mount, Goldsboro, and Raleigh, North Carolina Urbanized Areas. However, because the proposed site would encompass 60 percent of the Durham Urbanized Area, petitioner has provided the required *Tuck* analysis.⁴ Moreover, Petitioner seeks to relocate its transmitter site and has also provided the required gain and loss area data. In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest for the use of Channel 291C0 at Knightdale, North Carolina, or require petitioner to demonstrate the existence of an equivalent class channel for the use of other interested parties.

FCC Contact: Sharon P. McDonald, Media Bureau, 202-418-2180.

B. MB No. 05-122; RM-11198

Petitioner: Good Karma Broadcasting, LLC

c/o John D. Poutasse, Esq.
Leventhal, Senter & Lerman, PLLC
2000 K Street, N.W., Suite 600
Washington, D.C. 20006-1809

Proposal: Good Karma Broadcasting, LLC proposes the reallocation of Channel 263A from Columbus to Monona, Wisconsin and the modification of Station WTLX(FM)'s license accordingly.⁵

⁴ *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995); *Huntington Broadcasting Co. v. FCC*, 192 F.2d 33 (D.C. Cir. 1951) *RKO General, Inc. (KFRC) ("KFRC")*, 5 FCC Rcd 3222 (1990), and *Faye and Richard Tuck ("Tuck")*, 3 FCC Rcd 5374 (1988).

⁵ In support of its proposal, Petitioner states that Monona is incorporated with a 2000 U.S. Census population of 8,018 persons. The Monona Common Council is comprised of a mayor and six alderpersons. The Council appoints a full-time City Administrative. The Council is structured with 16 governing bodies (committees, commissions or boards). The city has its own police, volunteer fire/emergency, medical service, and public works department. Monona is part of the Grove School District which includes one high school, one charter school, one middle school, and four elementary schools. Monona has a commercial base with over 500 businesses.

<u>Community</u>	<u>Present</u>	<u>Channel No.</u>	<u>Proposed</u>
Columbus, Wisconsin	263A		--
Monona, Wisconsin	--		263A

Coordinates: The reference coordinates for Channel 263A at Monona are 43-08-19 NL and 89-22-27 WL. This allotment requires a site restriction of 9.1 kilometers (5.7 miles) north to avoid a short-spacing to the licensed site of Station WJVL(FM), Channel 260B1, Janesville, Wisconsin.

Additional Information: The reallocation of Channel 263A to Monona, Wisconsin, will provide the community with its first local aural transmission service, without depriving Columbus (population 4,479) of its sole local service.⁶ An engineering analysis has determined that Monona is located within the Madison, Wisconsin Urbanized Area, and that the 70 dBu signal will encompass 83.8 percent of that Urbanized Area. Accordingly, Petitioner has provided the required *Tuck* analysis.⁷ Since Petitioner seeks to relocate its transmitter site, it has also provided the required gain and loss area data. In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest for the use of Channel 263A at Monona, Wisconsin, or require petitioner to demonstrate the existence of an equivalent class channel for the use.

FCC Contact: Sharon P. McDonald, Media Bureau, 202-418-2180.

4. Comments, reply comments, counterproposals and other pleadings filed in response to this multiple docket *Notice of Proposed Rule Making* should reference *only* the specific docket to which the filing pertains. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached *Appendix* and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required in paragraph 2 of the *Appendix* before a channel will be allotted.

5. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, (47 C.F.R. §§ 1.415, 1.419) interested parties may file comments on or before May 9, 2005, and reply comments on or May 24, 2005,

⁶ In order to prevent the loss of the sole local service in Columbus, Petitioner states that it has filed for a construction permit to change the community of license of Station WTTN(AM), 1580 KHz, from Watertown to Columbus, Wisconsin (File No. CDBS-20050118AJT). The application was filed in connection with AM Auction No. 84. Petitioner further states that the Media Bureau has determined that Good Karma's AM Auction 84 filing window application for Station WTTN(AM) (File No. BMJP-20040129AGA) is not mutually exclusive with any other applications submitted in the filing window. Therefore, Petitioner advises that the Station WTTN application will be ripe for grant upon the expiration of the petition to deny period. Petitioner asserts that with the relocation of Station WTTN(AM) to Columbus, the community will not be deprived of its sole local service by the grant of the instant petition for rule making.

⁷ See Footnote 4, *supra*.

and are advised to read the *Appendix* for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of any filing should be served on the petitioner listed for the particular docket.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.⁸ This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

7. Parties are required to file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. **All filings must be addressed to Marlene H. Dortch, Secretary, Federal Communications Commission. Any filing that is not addressed to the Office of the Secretary will be treated as filed on the day it is received in the Office of the Secretary. See 47 C.F.R. § 1.7. Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.**

8. For further information concerning this proceeding, contact the FCC contact listed for that proceeding. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment, which has not been served on the petitioner, constitutes an *ex parte*

⁸ See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b) and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

presentation and shall not be considered in the proceeding. Any reply comment that has not been served on the person(s) who filed the comment to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r), and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS PROPOSED TO AMEND the M Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See 47 C.F.R. Section 1.420(d)).

(b) With respect to petitions for rule making which conflict with the proposals in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service (see 47 C.F.R. Section 1.420(a), (b) and (c)). Comments should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Room TW-A325, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of 47 C.F.R. Section 1.420, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Information Reference Center (Room CY-A257) at its headquarters, 445 12th Street, S.W., Washington, D.C. 20554.